

**OPINION
63-92**

July 10, 1963 (OPINION)

DAIRY PRODUCTS

RE: License - Expiration Dates

You have requested an official opinion on the following matter:

* * *In Chapter 19-06, section 04 of the North Dakota Century Code, it deals specifically with ice milk and we would like to have an interpretation as to whether this section has anything to do or will be in conflict with Chapter 4-30, section 02 of the North Dakota Century Code. This department is not clear on the interpretation as to the ice milk plant as it appears in both instances."

You also relate that:

The issuance of licenses for ice milk in Chapter 19-06, section 04 specifically states licensing for manufacturing for ice milk shall be issued by the department for a period of one year beginning on the first day of January of the year of issuance and terminating on the thirty-first day of December. In Chapter 4-30, section 02 there seems to be an inference that on licenses issued under this section shall expire on the thirtieth day of June of each year and shall not be transferable."

Chapter 19-06 of the North Dakota Century Code, titled IMITATION ICE CREAM LICENSES, was amended by Chapter 189 of the 1963 Session Laws and presently provides as follows at section 19-06-04 thereof:

19-06-04. LICENSES - TERM - REVOCATION. A license for the manufacturing of ice milk shall be issued by the department for a period of one year beginning on the first day of January of the year of issue and terminating on the thirty-first day of December following the date of issuance thereof. Each license shall cover but one manufacturer and shall be valid throughout the entire state. A license issued under this chapter shall not be transferable, and the department may revoke any such license for a violation of any provision of this chapter."
(Emphasis supplied.)

Section 19-06-08 of said Session Laws also provides that the Act be declared an emergency measure after its passage and approval, and said approval took place on March 13, 1963. It is clear that section 19-06-04 provides that a one-year license period is provided for commencing January first and terminating December thirty-first of the year of issue.

Chapter 87 of the 1963 Session Laws, originating out of Senate Bill No. 168, was codified as section 4-30-02, subsections 1 through 56

thereof. The Act is entitled "DAIRY PRODUCTS REGULATIONS." We note at the outset that said Act also repealed Chapters 4-18, 4-18A, and 4-18B of the North Dakota Century Code.

Section one thereof provides in part as follows:

SECTION 1. LICENSES REQUIRED - FEES - TERMS.) Every producer-processor, peddler, distributor, and every person purchasing milk or milk products for processing or manufacturing, or owning, operating, or leasing a creamery, cheese factory, condensery, drying plant, ice cream plant, ice milk plant cream station, milk plant and every other business engaged in the processing or manufacturing of milk or milk products and doing business within this state shall obtain the license required by this section for each such place of business. * * * * All licenses issued under this section shall expire on the thirtieth day of June of each year and shall not be transferable. The fee for such licenses shall be ten dollars."

It appears clear that the license required in this Act expires on June thirtieth of each year. We note that this Act was not an emergency measure, as was Chapter 189 previously cited and quoted.

To reach a conclusion in this case, we must refer back to certain other provisions of Chapter 189 (19-06 of the North Dakota Century Code). First section 19-06-05 provides as follows:

19-06-05. LICENSE FEES.) The fees for license to manufacture ice milk shall be ten dollars, provided, however, that only one license shall be required of a manufacturer in this state for the place where he manufactures ice milk or ice milk mix, whether said products are sold at wholesale, retail or both at such place. No ice milk manufacturer's license shall be required of any manufacturer holding a valid license to purchase and process dairy products."

From the reading of the above-quoted provision it is obvious that no person is required to have both licenses issued under the provisions of Chapter 19-06, as amended, and Chapter 4-30 insofar as ice milk plants are concerned.

The license issued under the provisions of Chapter 4-30 authorizes the holder to produce, process, peddle and distribute milk or milk products, including ice milk, for processing or manufacturing and to own, operate or lease a creamery, cheese factory, condensery, drying plant, ice cream plant, cream station, milk plant and every other business engaged in the processing or manufacturing of milk or milk products, including ice milk plants. These licenses expire on the thirtieth day of June of each year.

The license issued under the provisions of Chapter 19-06, as amended, only authorize the holder to manufacture ice milk and are much more limited than those licenses issued under the provisions of Chapter 4-30. These licenses expire on December thirty-first of each year.

The two licenses are separate and distinct, although those persons

holding licenses issued under the provisions of Chapter 4-30 do not need the license issued under the provisions of Chapter 19-06, as amended, to manufacture ice milk. Therefore those licenses issued under the provisions of Chapter 19-06, as amended, which only authorize the holder to manufacture ice milk expire on December thirty-first of each year. Those licenses issued under the provisions of Chapter 19-06, as amended, which only authorize the holder the manufacture ice milk expire on December thirty-first of each year. Those licenses issued under the provisions of Chapter 4-30 which authorize the holder to manufacture ice milk as well as other dairy products expire on June thirtieth of each year.

HELGI JOHANNESON

Attorney General